

Chapter 43.90. ALASKA GASLINE INDUCEMENT ACT

Article 01. INDUCEMENT TO CONSTRUCTION OF A NATURAL GAS PIPELINE IN THIS STATE

Sec. 43.90.010. Purpose.

The purpose of this chapter is to encourage expedited construction of a natural gas pipeline that

- (1) facilitates commercialization of North Slope gas resources in the state;
- (2) promotes exploration and development of oil and gas resources on the North Slope in the state;
- (3) maximizes benefits to the people of the state from the development of oil and gas resources in the state; and
- (4) encourages oil and gas lessees and other persons to commit to ship natural gas from the North Slope to a gas pipeline system for transportation to markets in this state or elsewhere.

Article 02. ALASKA GASLINE INDUCEMENT ACT LICENSE

Sec. 43.90.100. Gas project.

(a) The commissioners may award an Alaska Gasline Inducement Act license as provided in this chapter. The person awarded a license under this chapter is entitled to the inducement set out in [AS 43.90.110](#).

(b) Nothing in this chapter precludes a person from pursuing a gas pipeline independently from this chapter.

Sec. 43.90.110. Natural gas pipeline project construction inducement.

(a) Subject to the limitations of this chapter, a license issued under this chapter entitles the licensee or its designated affiliate to receive

(1) subject to appropriation, state matching contributions in the form of reimbursements in a total amount not to exceed \$500,000,000, paid to the licensee during the seven-year period immediately following the date the license is awarded; the payment period may be extended by the commissioners under an amendment or modification of the project plan under [AS 43.90.210](#); a payment under this paragraph shall be made according to the following:

(A) on or before the close of the first binding open season, the state shall reimburse the licensee's qualified expenditures at the level specified in the license; however, the state's reimbursements may not exceed 50 percent of the qualified expenditures incurred before the close of the first binding open season;

(B) after the close of the first binding open season, the state shall reimburse the licensee's qualified expenditures at the level specified in the license; however, the state's reimbursements may not exceed 90 percent of the qualified expenditures incurred after the close of the first binding open season;

(C) a qualified expenditure is a cost that is incurred after the license is issued under this chapter by the licensee or the licensee's designated affiliate, and is directly and reasonably related to pursuing firm transportation commitments in a binding open season, to securing financing for the project, or to obtaining a certificate of public convenience and necessity from the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as appropriate, or satisfying a requirement of an agency with jurisdiction over the project; in this subparagraph, "qualified expenditures" does not include overhead costs, lobbying costs, litigation costs, the cost of an asset or work product acquired or developed by the licensee before the license is issued, or civil or criminal penalties or fines; and

(2) the benefit of an Alaska Gasline Inducement Act coordinator who has the authority prescribed in [AS 43.90.250](#).

(b) The commissioner of revenue in consultation with the commissioner of natural resources shall adopt regulations for determining whether an expenditure is a qualified expenditure for the purposes of (a) of this section.

Sec. 43.90.120. Request for applications for the license.

(a) The commissioners shall commence a public process to request applications for a license under this chapter as soon as practicable after June 8, 2007.

(b) The commissioners may use independent contractors to assist them in developing the request for applications and in evaluating applications received under this chapter.

(c) The provisions of AS 36.30 do not apply to requests for applications under this chapter.

Sec. 43.90.130. Application requirements.

An application for a license must be consistent with the terms of the request for applications under [AS 43.90.120](#) and must

(1) be filed by the deadline established by the commissioners in the request for applications;

(2) provide a thorough description of a proposed natural gas pipeline project for transporting natural gas from the North Slope to market, which description may include multiple design proposals, including different design proposals for pipe diameter, wall thickness, and transportation capacity, and which description must include

(A) the route proposed for the natural gas pipeline, which may not be the route described in [AS 38.35.017\(b\)](#);

(B) the location of receipt and delivery points and the size and design capacity of the proposed natural gas pipeline at the proposed receipt and delivery points, except that this information is not required for in-state delivery points unless the application proposes specific in-state delivery points;

(C) an analysis of the project's economic and technical viability, including a description of all pipeline access and tariff terms the applicant plans to offer;

(D) an economically and technically viable work plan, timeline, and associated budget for developing and performing the proposed project, including field work, environmental studies, design, and engineering, implementing practices for controlling carbon emissions from natural gas systems as established by the United States Environmental Protection Agency, and complying with all applicable state, federal, and international regulatory requirements that affect the proposed project; the applicant shall address the following:

(i) if the proposed project involves a pipeline into or through Canada, a thorough description of the applicant's plan to obtain necessary rights-of-way and authorizations in Canada, a description of the transportation services to be provided and a description of rate-making methodologies the applicant will propose to the regulatory agencies, and an estimate of rates and charges for all services;

(ii) if the proposed project involves marine transportation of liquefied natural gas, a description of the marine transportation services to be provided and a description of proposed rate-making methodologies; an estimate of rates and charges for all services by third parties; a detailed description of all proposed access and tariff terms for liquefaction services or, if third parties would perform liquefaction services, identification of the third parties and the terms applicable to the liquefaction services; a complete description of the marine segment of the project, including the proposed ownership, control, and cost of liquefied natural gas tankers, the management of shipping services, liquefied natural gas export, destination, regasification facilities, and pipeline facilities needed for transport to market destinations, and the entity or entities that would be required to obtain necessary export permits and licenses or a certificate of public convenience and necessity from the Federal Energy Regulatory Commission for the transportation of liquefied natural gas in interstate commerce if United States markets are proposed; and all rights-of-way or authorizations required from a foreign country;

(3) commit that if the proposed project is within the jurisdiction of the Federal Energy Regulatory Commission, the applicant will

(A) conclude, by a date certain that is not later than 36 months after the date the license is issued, a binding open season that is consistent with the requirements of 18 C.F.R. Part 157, Subpart B (Open Seasons for Alaska Natural Gas Transportation Projects) and 18 C.F.R. 157.30 - 157.39;

(B) apply for Federal Energy Regulatory Commission approval to use the pre-filing procedures set out in 18 C.F.R. 157.21 by a date certain, and use those procedures before filing an application for a certificate of public convenience and necessity, except where the procedures

are not required as a result of sec. 5 of the President's Decision issued under 15 U.S.C. 719 et seq. (Alaska Natural Gas Transportation Act of 1976); and

(C) apply for a Federal Energy Regulatory Commission certificate of public convenience and necessity to authorize the construction and operation of the proposed project described in this section by a date certain;

(4) if the proposed project is within the jurisdiction of the Regulatory Commission of Alaska, commit to

(A) conclude, by a date certain that is not later than 36 months after the date the license is issued, a binding open season that is consistent with the requirements of AS 42.06; and

(B) apply for a certificate of public convenience and necessity to authorize the construction and operation of the proposed project by a date certain;

(5) commit that after the first binding open season, the applicant will assess the market demand for additional pipeline capacity at least every two years through public nonbinding solicitations or similar means;

(6) commit to expand the proposed project in reasonable engineering increments and on commercially reasonable terms that encourage exploration and development of gas resources in this state; in this paragraph,

(A) "commercially reasonable terms" means that, subject to the provisions of (7) of this section, revenue from transportation contracts covers the cost of the expansion, including increased fuel costs and a reasonable return on capital as authorized by the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as applicable, and there is no impairment of the proposed project's ability to recover the costs of existing facilities;

(B) "reasonable engineering increments" means the amount of additional capacity that could be added by compression or a pipe addition using a compressor size or pipe size, as applicable, that is substantially similar to the original compressor size and pipe size;

(7) commit that the applicant

(A) will propose and support the recovery of mainline capacity expansion costs, including fuel costs, from all mainline system users through rolled-in rates as provided in (B) and (C) of this paragraph or through a combination of incremental and rolled-in rates as provided in (D) of this paragraph;

(B) will propose and support the recovery of mainline capacity expansion costs, including fuel costs, from all mainline system users through rolled-in rates; an applicant is obligated under this subparagraph only if the rolled-in rates would increase the rates

(i) not described in (ii) of this subparagraph by not more than 15 percent above the initial maximum recourse rates for capacity acquired before commercial operations commence; in this sub-subparagraph, "initial maximum recourse rates" means the highest cost-based rates for any specific transportation service set by the Federal Energy Regulatory Commission, the Regulatory Commission of Alaska, or the National Energy Board of Canada, as appropriate, when the pipeline commences commercial operations;

(ii) by not more than 15 percent above the negotiated rate for pipeline capacity on the date of commencement of commercial operations where the holder of the capacity is not an affiliate of the owner of the pipeline project; for the purposes of this sub-subparagraph, "negotiated rate" means the rate in a transportation service agreement that provides for a rate that varies from the otherwise applicable cost-based rate, or recourse rate, set out in a gas pipeline's tariff approved by the Federal Energy Regulatory Commission, the Regulatory Commission of Alaska, or the National Energy Board of Canada, as appropriate; or

(iii) for capacity acquired in an expansion after commercial operations commence, to a level that is not more than 115 percent of the volume-weighted average of all rates collected by the project owner for pipeline capacity on the date commercial operations commence;

(C) will, if recovery of mainline capacity expansion costs, including fuel costs, through rolled-in rate treatment would increase the rates for capacity described in (B) of this paragraph, propose and support the partial roll-in of mainline expansion costs, including fuel costs, to the extent that rates acquired before commercial operations commence do not exceed the levels described in (B) of this paragraph;

(D) may, for the recovery of mainline capacity expansion costs, including fuel costs, that, under rolled-in rate treatment, would result in rates that exceed the level in (B) of this paragraph, propose and support the recovery of those costs through any combination of incremental and rolled-in rates;

(E) will not enter into a negotiated rate agreement that would preclude the applicant from collecting from any shipper, including a shipper with a negotiated rate agreement, the rolled-in rates that are required to be proposed and supported by the applicant under (B) of this paragraph or the partial rolled-in rates that are required to be proposed and supported by the applicant under (C) of this paragraph;

(8) state how the applicant proposes to deal with a North Slope gas treatment plant, regardless of whether that plant is part of the applicant's proposal, and, to the extent that the plant will be owned entirely or in part by the applicant, commit to seek certificate authority from the Federal Energy Regulatory Commission if the proposed project is engaged in interstate commerce, or from the Regulatory Commission of Alaska if the project is not engaged in interstate commerce; for a North Slope gas treatment plant that will be owned entirely or in part by the applicant, for rate-making purposes, commit to value previously used assets that are part of the gas treatment plant at net book value; describe the gas treatment plant, including its design, engineering, construction, ownership, and plan of operation; the identity of any third

party that will participate in the ownership or operation of the gas treatment plant; and the means by which the applicant will work to minimize the effect of the costs of the facility on the tariff;

(9) propose a percentage and total dollar amount for the state's reimbursement under AS 43.90.110(a)(1)(A) and (B) to be specified in the license;

(10) commit to propose and support rates for the proposed project and for any North Slope gas treatment plant that the applicant may own, in whole or in part, that are based on a capital structure for rate-making that consists of not less than 70 percent debt;

(11) describe the means for preventing and managing overruns in costs of the proposed project, and the measures for minimizing the effects on tariffs from any overruns;

(12) commit to provide a minimum of five delivery points of natural gas in this state;

(13) commit to

(A) offer firm transportation service to delivery points in this state as part of the tariff regardless of whether any shippers bid successfully in a binding open season for firm transportation service to delivery points in this state; and

(B) offer distance-sensitive rates to delivery points in the state consistent with 18 C.F.R. 157.34(c)(8);

(14) commit to establish a local headquarters in this state for the proposed project;

(15) to the maximum extent permitted by law, commit to

(A) hire qualified residents from throughout the state for management, engineering, construction, operations, maintenance, and other positions on the proposed project;

(B) contract with businesses located in the state;

(C) establish hiring facilities or use existing hiring facilities in the state; and

(D) use, as far as is practicable, the job centers and associated services operated by the Department of Labor and Workforce Development and an Internet-based labor exchange system operated by the state;

(16) waive the right to appeal the rejection of the application as incomplete, the issuance of a license to another applicant, or the determination under AS 43.90.180(b) that no application merits the issuance of a license;

(17) commit to negotiate, before construction, a project labor agreement to the maximum extent permitted by law; in this paragraph, "project labor agreement" means a comprehensive collective bargaining agreement between the licensee or its agent and the appropriate labor

representatives to ensure expedited construction with labor stability for the project by qualified residents of the state;

(18) commit that the state reimbursement received by a licensee may not be included in the applicant's rate base, and shall be used as a credit against the licensee's cost of service;

(19) provide a detailed description of the applicant, all entities participating with the applicant in the application and the project proposed by the applicant, and persons the applicant intends to involve in the construction and operation of the proposed project; the description must include the nature of the affiliation for each person, the commitments by the person to the applicant, and other information relevant to the commissioners' evaluation of the readiness and ability of the applicant to complete the project presented in the application;

(20) demonstrate the readiness, financial resources, and technical ability to perform the activities specified in the application by describing the applicant's history of compliance with safety, health, and environmental requirements, the ability to follow a detailed work plan and timeline, and the ability to operate within an associated budget.

Sec. 43.90.140. Initial application review; additional information requests; complete applications.

(a) After the deadline established by the commissioners for filing an application has passed, the commissioners shall open and review each application to determine whether it is consistent with the terms of the request for applications and meets the requirements of AS 43.90.130. The commissioners shall reject as incomplete an application that does not meet the requirements of [AS 43.90.130](#).

(b) To evaluate whether an application should be rejected under (a) of this section, the commissioners may request additional information relating to the application.

(c) If, within the time specified by the commissioners, the applicant fails to provide the additional information requested under (b) of this section, or submits additional information that is not responsive, the application shall be rejected.

(d) For an application not rejected under this section, the commissioners shall make a determination that the application, including any requested additional information, is complete.

(e) Except as provided under [AS 43.90.150](#), and after determining which applications are complete, the commissioners shall make all applications available to the legislature.

Sec. 43.90.150. Proprietary information and trade secrets.

(a) At the request of the applicant, information submitted under this chapter that the applicant identifies and demonstrates is proprietary or is a trade secret is confidential and not subject to public disclosure under AS 40.25. After a license is awarded, all information

submitted by the licensee, retained under this chapter, and not determined by the commissioners to be a proprietary or trade secret shall be made public.

(b) If the commissioners determine that the information submitted by the applicant is not proprietary or is not a trade secret, the commissioners shall notify the applicant and return the information at the request of the applicant.

Sec. 43.90.160. Notice, review, and comment.

(a) The commissioners shall publish notice and provide a 60-day period for public review and comment on all applications determined complete under [AS 43.90.140](#). Except as provided under [AS 43.90.150](#), all applications filed under this chapter shall be made public, including applications rejected as incomplete under [AS 43.90.140](#).

(b) Applications received under this chapter are not subject to public disclosure under AS 40.25 until the commissioners publish notice under this section. However, information that the commissioners have determined is proprietary or a trade secret under [AS 43.90.150](#) may not be made public even after the notice is published under (a) of this section, except as otherwise provided in [AS 43.90.150](#). If information is proprietary or a trade secret and is held confidential under AS 43.90.150, the applicant shall provide a summary of the confidential information that is satisfactory to the commissioners, and the commissioners shall make the summary of the information available to the public.

(c) After the commissioners determine that the applications are complete under [AS 43.90.140](#), information provided by an applicant to the commissioners under this chapter, including information determined by the commissioners to be confidential under [AS 43.90.150](#), shall be disclosed to the legislative auditor, the fiscal analyst who serves as head of the legislative finance division, members of the legislature, and their respective agents and contractors, on request and after the individual making the request signs a confidentiality agreement prepared by the commissioners.

Sec. 43.90.170. Application evaluation and ranking.

(a) The commissioners shall evaluate all applications determined to be complete under [AS 43.90.140](#), consider public comments received under [AS 43.90.160\(a\)](#), and rank each application according to the net present value of the anticipated cash flow to the state from the applicant's project proposal using the factors in (b) of this section and weighted by the project's likelihood of success based on the commissioners' assessment of the factors listed in (c) of this section.

(b) When evaluating the net present value of anticipated cash flow to the state from the applicant's project proposal, the commissioners shall use an undiscounted value and, at a minimum, discount rates of two, five, six, and eight percent, and consider

(1) how quickly the applicant proposes to begin construction of the proposed project and how quickly the project will commence commercial operation;

(2) the net back value of the gas determined by the destination market value of the gas and estimated transportation and treatment costs;

(3) the ability of the applicant to prevent or reduce project cost overruns that would increase the tariff;

(4) the initial design capacity of the applicant's project and the extent to which the design can accommodate low-cost expansion;

(5) the amount of the reimbursement by the state under AS 43.90.110(a)(1)(A) and (B) proposed by the applicant under AS 43.90.130(9);

(6) economic value resulting from payments required to be made to the state under the terms of the proposal; and

(7) other factors found by the commissioners to be relevant to the evaluation of the net present value of the anticipated cash flow to the state.

(c) When evaluating the project's likelihood of success, the commissioners shall consider

(1) the reasonableness, specificity, and feasibility of the applicant's work plan, timeline, and budget required to be submitted under [AS 43.90.130](#), including the applicant's plan to manage cost overruns, insulate shippers from the effect of cost overruns, and encourage shippers to participate in the first binding open season;

(2) the financial resources of the applicant;

(3) the ability of the applicant to comply with the proposed performance schedule;

(4) the applicant's organization, experience, accounting and operational controls, technical skills or the ability to obtain them, and necessary equipment or the ability to obtain the necessary equipment;

(5) the applicant's record of

(A) performance on projects not licensed under this chapter;

(B) integrity and good business ethics; and

(6) other evidence and factors found by the commissioners to be relevant to the evaluation of the project's likelihood of success.

Sec. 43.90.180. Notice to the legislature of intent to issue license; denial of license.

(a) If, after consideration of public comments received under AS 43.90.160(a) and evaluation of complete applications under AS 43.90.170, the commissioners determine that an

application proposes a project that will sufficiently maximize the benefits to the people of this state and merits issuance of a license under this chapter, the commissioners shall

(1) issue a determination, with written findings addressing the basis for the determination; the determination becomes a final agency action on the effective date of a bill approving the issuance of the license under [AS 43.90.190](#);

(2) publish notice of intent to issue a license under this chapter with written findings addressing the basis for the determination; and

(3) forward the notice under (2) of this subsection, along with the findings, supporting documentation, and determination under (1) of this subsection, to the presiding officer of each house of the legislature for action as provided in [AS 43.90.190](#).

(b) If, after evaluation of complete applications under AS 43.90.170, the commissioners determine that no application sufficiently maximizes the benefits to the people of this state and merits issuance of a license under this chapter, the commissioners shall issue a written finding that addresses the basis for that determination.

(c) The commissioners' determination under (b) of this section is a final agency action.

Sec. 43.90.190. Legislative approval; issuance of license.

(a) After the presiding officer of each house of the legislature receives a determination from the commissioners under [AS 43.90.180](#), the rules committee of each house of the legislature shall introduce a bill in the committee's respective chamber that provides for the approval of the license proposed to be issued by the commissioners.

(b) If a bill approving the issuance of the license passes the legislature within 60 days after the last date a presiding officer receives a determination by the commissioners under [AS 43.90.180](#), the commissioners shall issue the license as soon as practicable after the effective date of the Act approving the issuance of the license.

(c) Notwithstanding a legislative rule that prohibits the carryover of a bill after the end of a special session or after the end of a regular session of a legislature, a bill introduced under (a) of this section that is not passed or not withdrawn, defeated, vetoed, or indefinitely postponed shall be carried over to any subsequent regular or special legislative session convened during the 60-day period described in (b) of this section in the same reading or status it was in at the time of adjournment. However, a bill introduced under (a) of this section may not be carried over to the first regular session of a legislature.

(d) If the legislature fails to approve the issuance of the license, the commissioners

(1) may not issue the license that the legislature failed to approve; and

(2) may request new applications for a license under [AS 43.90.120](#).

Sec. 43.90.200. Certification by regulatory authority and project sanction.

(a) A licensee that is awarded a certificate of public convenience and necessity from a regulatory agency with jurisdiction over the project shall accept the certificate on or before the date the order granting the certificate is no longer subject to judicial review.

(b) If the licensee has credit support sufficient to finance construction of the project through ownership of rights to produce and market gas resources, firm transportation commitments, or government financing, the licensee shall sanction the project within one year after the effective date of the certificate of public convenience and necessity issued by the regulatory agency with jurisdiction over the project.

(c) If the licensee does not have credit support sufficient to finance construction of the project through ownership of rights to produce and market gas resources, firm transportation commitments, or government financing, the licensee shall sanction the project before the later of

(1) two years after the effective date of the certificate of public convenience and necessity issued by the regulatory agency with jurisdiction over the project; or

(2) five years after the close of the first binding open season of the project.

(d) If the licensee fails to sanction the project as required under this section, the licensee shall, upon request by the state,

(1) seek approval from the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska, as applicable, to abandon and transfer the certificate to the state or the state's designee; and

(2) assign to the state or the state's designee all engineering designs, contracts, permits, and other data related to the project that are acquired by the licensee during the term of the license before the date of the abandonment or transfer.

(e) The transfer and assignments under (d) of this section as a result of failure to comply with (a) or (b) of this section are at no cost to the state or the state's designee. A transfer under (c) of this section shall be subject to the state's payment to the licensee of the net amount of expenditures incurred and paid by the licensee that are qualified expenditures for the purposes of [AS 43.90.110](#).

(f) In this section, "effective date of the certificate of public convenience and necessity" means the earlier of the date the order granting the certificate is no longer subject to judicial review, or the date the licensee accepts the certificate.

Sec. 43.90.210. Amendment of or modification to the project plan.

Subject to the approval of the commissioners, a licensee may amend or modify its project plan if the amendment or modification improves the net present value of the project to the state, is

necessary because of an order or requirement by a regulatory agency with jurisdiction over the project or by the Alaska Oil and Gas Conservation Commission, or is necessary because of changed circumstances outside the licensee's control and not reasonably foreseeable before the license was issued. An amendment or modification approved under this section must be consistent with the requirements of [AS 43.90.130](#) and, except for an amendment or modification required because of an order or requirement of a regulatory agency with jurisdiction over the project or by the Alaska Oil and Gas Conservation Commission, may not substantially diminish the value of the project to the state or the project's likelihood of success.

Sec. 43.90.220. Records, reports, conditions, and audit requirements.

(a) A licensee shall maintain complete and accurate records of all expenditures and commitments of state money received under this chapter, including receipts and records showing the payment or cost of purchased items and services, the names and addresses of the sellers and service providers, and the dates of service or delivery.

(b) Upon reasonable notice, the commissioners may audit the records, books, and files of the entity receiving the state money or making the expenditures and commitments of money received from the state under this chapter.

(c) The commissioners may do the following with respect to information relating to the project: conduct hearings or other investigative inquiries; compel the attendance of witnesses and production of documents; and require the licensee to furnish information in paper copy or electronic format.

(d) After a license has been issued and until commencement of commercial operations of a natural gas pipeline, the licensee shall allow the commissioners to

(1) have a representative present at all meetings of the licensee's governing body or bodies and equity holders that relate to the project;

(2) receive all relevant notices and information when and as sent to the governing body or bodies and equity holders;

(3) enjoy the same access to information about the licensee as the governing body members and equity owners receive; and

(4) receive relevant reports or information from the licensee that the commissioners reasonably request.

(e) All proprietary information, privileged information, and trade secrets received by the commissioners or their representative under (d) of this section are not subject to public disclosure under AS 40.25.

(f) A licensee shall maintain the records and reports required under this section for seven years from the date the licensee receives state money under this chapter.

Sec. 43.90.230. License violations; damages.

(a) A licensee is in violation of the license if the commissioners determine that the licensee has

(1) requested and received money from the state under this chapter for an expenditure that is not a qualified expenditure under AS 43.90.110;

(2) except as required to conform with a requirement of a regulatory agency with jurisdiction over the project, substantially departed from the specifications set out in the application without state approval of a project plan amendment or modification under AS 43.90.210;

(3) violated any provision of this chapter or any other provision of state or federal law material to the license;

(4) failed to accept a certificate as required under AS 43.90.200(a) or failed to sanction the project as required under AS 43.90.200(b); or

(5) otherwise violated a material term of the license.

(b) The commissioners shall provide written notice to the licensee identifying a license violation. The commissioners and the licensee have 90 days after the date the notice is issued to resolve the violation informally.

(c) The commissioners may suspend disbursement of state reimbursements to the licensee beginning on the date that the notice of violation issued under (b) of this section is sent to the licensee. The commissioners may resume disbursement on the date that the commissioners determine that the violation is cured.

(d) If the commissioners and the licensee are unable to resolve the violation within the period described in (b) of this section, the commissioners shall notify the licensee that the violation has not been cured and provide the licensee with an opportunity to be heard. If, after notice and hearing, the commissioners determine that the violation has not been cured, the commissioners shall issue a written decision that is a final administrative action for purposes of appeal to the superior court in the state.

(e) If the determination issued under (d) of this section finds an unresolved violation, the commissioners may impose one or more of the following remedies:

(1) discontinuation of state reimbursements under this chapter;

(2) recoupage of state money that the licensee has received under this chapter to date, with interest, regardless of whether the licensee has expended or committed that money;

(3) license revocation;

(4) assignment to the state or the state's designee of all engineering designs, contracts, permits, and other data related to the project that are acquired by the licensee during the term of the license; and

(5) any other remedies provided by law or in equity.

Sec. 43.90.240. Abandonment of project.

(a) If the commissioners and the licensee agree that the project is uneconomic, the project shall be abandoned, the inducement provided for in [AS 43.90.110](#) shall be terminated, and, except for requirements imposed on the licensee under (e) of this section and [AS 43.90.220](#), the state and the licensee no longer have an obligation under this chapter with respect to the license.

(b) If the commissioners or the licensee determines that the project is uneconomic and the other party disagrees, the disagreement shall be settled by arbitration administered by the American Arbitration Association under the substantive and procedural laws of this state, and judgment on the award rendered by the arbitrators may be entered in superior court in the state. In the event of arbitration, each party shall select an arbitrator from the American Arbitration Association's National Roster, and the two arbitrators shall appoint a third arbitrator from the American Arbitration Association's National Roster who shall serve as the chair of the three-member arbitration panel. If the arbitration panel determines that the project is

(1) uneconomic, the state and the licensee no longer have an obligation under this chapter with respect to the license, except for requirements imposed on the licensee under (e) of this section and [AS 43.90.220](#); or

(2) not uneconomic, the obligations of the licensee and the state continue as provided under this chapter and the license.

(c) The arbitration panel in (b) of this section shall make a determination that the project is uneconomic only if the panel finds that the party claiming the project is uneconomic has proven by a preponderance of the evidence that the

(1) project does not have credit support sufficient to finance construction of the project through firm transportation commitments, government assistance, or other external sources of financing; and

(2) predicted costs of transportation at a 100 percent load factor, when deducted from predicted gas sales revenue using publicly available predictions of future gas prices, would result in a producer rate of return that is below the rate typically accepted by a prudent oil and gas exploration and production company for incremental upstream investment that is required to produce and deliver gas to the project.

(d) If the state makes a payment to the licensee under [AS 43.90.440](#), the license is considered abandoned, and the state and the licensee no longer have any obligations under this chapter with respect to the license, except that the licensee must comply with the

(1) requirements imposed on the licensee under [AS 43.90.220](#) regarding state money received by the licensee before the license was considered abandoned; and

(2) requirements of [AS 43.90.440](#).

(e) If the commissioners and the licensee agree that the project is uneconomic or an arbitration panel makes a final determination that the project is uneconomic, the licensee shall, upon the state's request, transfer to the state or the state's designee all engineering designs, contracts, permits, and other data related to the project that are acquired by the licensee during the term of the license upon reimbursement by the state of the net amount of expenditures incurred and paid by the licensee that are qualified expenditures for the purposes of [AS 43.90.110](#).

Sec. 43.90.250. Alaska Gasline Inducement Act coordinator.

(a) There is created in the Office of the Governor the position of Alaska Gasline Inducement Act coordinator. Administrative support for the position shall be provided by the Office of the Governor. The position shall continue until one year after commencement of commercial operations of the project.

(b) The governor shall appoint a person to the position of Alaska Gasline Inducement Act coordinator. The individual serving as the Alaska Gasline Inducement Act coordinator may be removed from the position at the discretion of the governor.

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Sec. 43.90.260. Expedited review and action by state agencies.

(a) A review conducted and action taken by a state agency relating to the project shall be expedited in a manner consistent with the completion of the necessary approvals in accordance with this chapter.

(b) Notwithstanding any contrary provision of law, a state agency may not include in any project certificate, right-of-way, permit, or other authorization issued to the licensee a term or condition that is not required by law if the coordinator determines that the term or condition would prevent or impair in any significant respect the expeditious construction and operation or expansion of the project.

(c) Unless required by law, a state agency may not add to, amend, or abrogate any certificate, right-of-way, permit, or other authorization issued to a licensee if the coordinator determines that the action would prevent or impair in any significant respect the expeditious construction, operation, or expansion of the project.

Article 03. RESOURCE INDUCEMENTS

Sec. 43.90.300. Qualification for resource inducements.

(a) Notwithstanding any contrary provision of law, a lessee or other person that demonstrates to the satisfaction of the commissioners that the person has committed to acquire firm transportation capacity in the first binding open season of the project is qualified to receive the resource inducement set out in [AS 43.90.310](#) and 43.90.320 for gas produced on the North Slope and shipped in firm transportation capacity acquired in the first binding open season of the project. The inducement in [AS 43.90.310](#) is contractual.

(b) A gas producer receiving a voucher under [AS 43.90.330](#) is qualified to receive the resource inducement in [AS 43.90.310](#) and 43.90.320 for the gas shipped in the firm transportation capacity described in the voucher for the period described in [AS 43.90.330](#).

#### Sec. 43.90.310. Royalty inducement.

(a) Before the start of the first binding open season to be conducted by the licensee, the commissioner of natural resources shall adopt regulations that establish a method to determine the monthly value of the state's royalty share of gas production and establish terms under which the state will exercise its right to switch between taking its royalty in value or in kind for gas committed for firm transportation in the first binding open season of the project or shipped in the firm transportation capacity described in a voucher received by the gas producer under [AS 43.90.330](#). The regulations must

(1) minimize retroactive adjustments to the monthly value of the state's royalty share of gas production;

(2) provide a method for establishing a fair market value for each component of the state's royalty gas that is based on pricing data from reliable and widely available industry trade publications and that uses appropriate adjustments to reflect

(A) deductions for actual and reasonable transportation costs for the state's royalty gas, including a reasonable share of the costs associated with unused capacity commitments on gas pipelines from the North Slope to the first destination market with reasonable market liquidity;

(B) location differentials between the destination markets where North Slope gas could be sold;

(C) reasonable and actual costs for gas processing; in this subparagraph, "gas processing" means post-production treatment of gas to extract natural gas liquids; and

(D) deductions permitted under the 1980 Royalty Settlement Agreement for Prudhoe Bay gas; and

(3) establish terms under which the state will exercise its authority to switch between taking its royalty gas in value and in kind to ensure that the state's actions do not unreasonably

(A) cause the lessee or other person to bear disproportionate transportation costs with respect to the state's royalty gas;

(B) interfere with the lessee's or other person's long-term marketing of its production.

(b) If a lessee or other person qualified for a resource inducement under [AS 43.90.300](#) agrees under (c) of this section, the lessee or other person is entitled to elect

(1) to calculate its gas royalty obligation under the regulations adopted under (a) of this section for natural gas transported on a firm contract executed during the project's first binding open season or under the methodology set out in the existing leases from which the gas is produced, and

(A) upon the request of the lessee, the commissioner of natural resources shall contractually amend the existing lease to effect the election under this paragraph and incorporate as fixed contract terms the relevant regulatory provisions; and

(B) the election under this paragraph remains in effect until new regulations are adopted as a result of a review under (d) of this section, at which time, a lessee or other person qualified under AS 43.90.300 may change its election under this paragraph; upon the request of the lessee, the commissioner of natural resources shall contractually amend the lease to incorporate as fixed contract terms the relevant revised regulatory provisions;

(2) to enter into a contract with the state that amends the existing lease terms by providing a mechanism that ensures that, when the state exercises its right to switch between taking its royalty in value or in kind for gas committed for firm transportation in the first binding open season of the project, the lessee or other person does not bear disproportionate transportation costs with respect to the state's royalty gas; and by modifying the required period of notice that the state must provide before exercising the state's right to switch between taking its royalty in value or in kind for gas committed for firm transportation in the first binding open season of the project.

(c) To claim the inducement under (b) of this section, a lessee or other person qualified under [AS 43.90.300](#) shall agree, on an application form provided by the Department of Natural Resources, that the lessee or other person, and the lessee's or other person's affiliates, successors, assigns, and agents, will not protest or appeal a filing by the licensee to roll in expansion costs of the mainline up to a level that is required in [AS 43.90.130\(7\)](#) if the Federal Energy Regulatory Commission does not have a rebuttable presumption in effect that rolled-in treatment applies to the cost of the expansion of the project. The agreement not to protest may not preclude the lessee or other person, or the lessee's or other person's affiliates, successors, assigns, and agents, from protesting a filing to roll in mainline expansion costs that the licensee is not required to propose and support under [AS 43.90.130\(7\)](#).

(d) The commissioner of natural resources shall provide for review of the regulations adopted under (a) of this section at least every two years after the commencement of commercial operations to determine whether the regulations continue to meet the requirements of (a) of this section under current conditions, and shall amend the regulations when the requirements are not being met.

(e) No provision of this chapter precludes the election set out in (b) of this section, nor may the commissioner of natural resources assert any provision of any existing lease or unit agreement as precluding the elections set out in (b) of this section.

Sec. 43.90.320. Gas production tax exemption.

(a) If a person qualified for a resource inducement under AS 43.90.300 agrees under (c) of this section, the person is entitled to an annual exemption from the state's gas production tax in an amount equal to the difference between the amount of the person's gas production tax obligation calculated under the gas production tax in effect during that tax year and the amount of the person's gas production tax obligation calculated under the gas production tax in effect at the start of the first binding open season held under this chapter. If the difference is less than zero, the gas production tax exemption is zero.

(b) The exemption under this section may be applied within 10 years immediately following commencement of commercial operations and only applied to production taxes that are levied on North Slope gas shipped through firm transportation capacity the person acquired during the first binding open season or shipped in the firm transportation capacity described in a voucher received by the gas producer under AS 43.90.330.

(c) The person claiming the exemption under this section shall agree that the person, and the person's affiliates, successors, assigns, and agents, will not protest or appeal a filing by the licensee to roll in mainline expansion costs up to the level that the licensee is required to propose and support under [AS 43.90.130\(7\)](#) if the Federal Energy Regulatory Commission does not have a rebuttable presumption in effect that rolled-in treatment applies to the cost of the expansion of the project. The agreement required under this subsection may not preclude the person, or the person's affiliates, successors, assigns, and agents, from protesting a filing to roll in mainline expansion costs that the licensee is not required to propose and support under [AS 43.90.130\(7\)](#).

(d) In this section, "gas production tax" means the tax levied on the production of gas under AS 43.55.

Sec. 43.90.330. Inducement vouchers.

(a) A person that acquires firm transportation capacity in the first binding open season of the project, that does not hold an oil and gas lease on the North Slope, and that is not an affiliate of a person that holds an oil and gas lease on the North Slope may apply to the commissioners for a voucher under this section. A voucher issued by the commissioners must describe the firm transportation capacity in the project to which the voucher is applicable.

(b) A voucher issued by the commissioners under this section entitles the holder of the voucher to the resource inducements in AS 43.90.310 and 43.90.320 for gas shipped in the firm transportation capacity acquired by the person applying for the voucher during the first binding open season of the project and described in the voucher. The voucher may be transferred to a gas producer that has a binding obligation to sell gas to the person transferring the voucher under a gas purchase agreement.

(c) A gas producer holding a voucher may claim the resource inducements for gas shipped through the firm transportation capacity described in the voucher and only on gas that is produced and delivered to the purchaser on the North Slope. A gas producer may claim the resource inducements under this subsection until the earlier of the termination of the binding gas purchase agreement or the expiration of the inducements by operation of law.

(d) A person that receives a voucher under this section and a gas producer that receives resource inducements under a voucher shall agree that the person and the gas producer and their respective affiliates, successors, assigns, or agents will not protest or appeal a filing by the licensee to roll in mainline expansion costs up to the level that the licensee is required to propose and support under AS 43.90.130(7) if the Federal Energy Regulatory Commission does not have a rebuttable presumption in effect that rolled-in treatment applies to the cost of the expansion of the project. The agreement required under this subsection may not preclude the person or gas producer or their respective affiliates, successors, assigns, or agents from protesting a filing to roll in mainline expansion costs that the licensee is not required to propose and support under [AS 43.90.130\(7\)](#).

#### Article 04. MISCELLANEOUS PROVISIONS

##### Sec. 43.90.400. Alaska Gasline Inducement Act reimbursement fund; disbursements; audits.

(a) There is established in the general fund an Alaska Gasline Inducement Act reimbursement fund. The fund consists of money appropriated to it by the legislature for disbursement to pay the state's reimbursements under [AS 43.90.110](#). Money appropriated to the fund may be spent for the purposes of the fund without further appropriation. Appropriations to the fund do not lapse under AS 37.25.010, but remain in the fund for future disbursements. Nothing in this subsection creates a dedicated fund.

(b) The Department of Revenue shall manage the fund, and may invest money in the fund so as to yield competitive market rates as provided in [AS 37.10.071](#). Income earned on the fund shall be accounted for separately and may be appropriated annually to the fund.

(c) The commissioners shall adopt regulations that provide for application to receive reimbursements for qualified expenditures as provided under [AS 43.90.110](#), and that provide for periodic audits of the use of money disbursed as reimbursements under this chapter.

(d) Within 10 days after the convening of each regular session of the legislature, the commissioners shall submit to the legislature a report that lists all the disbursements from the fund during the preceding fiscal year with a written justification for each disbursement and the projected amount of money that will be required for reimbursements in each of the next three fiscal years.

##### Sec. 43.90.410. Regulations.

The commissioners may jointly adopt or amend regulations for the purpose of implementing the provisions of this chapter. The commissioner of revenue and the commissioner of natural

resources may adopt or amend regulations adopted under authority outside of this chapter as necessary to implement the provisions of this chapter.

Sec. 43.90.420. Statute of limitations.

A person may not bring a judicial action challenging the constitutionality of this chapter or the constitutionality of a license issued under this chapter unless the action is commenced in a court of the state of competent jurisdiction within 90 days after the date that a license is issued.

Sec. 43.90.430. Interest.

When a payment due to the state under this chapter becomes delinquent, the payment bears interest at the rate applicable to a delinquent tax under [AS 43.05.225](#).

Sec. 43.90.440. Licensed project assurances.

(a) Except as otherwise provided in this chapter, the state grants a licensee assurances that the licensee has exclusive enjoyment of the inducements provided under this chapter before the commencement of commercial operations. If, before the commencement of commercial operations, the state extends to another person preferential royalty or tax treatment or grant of state money for the purpose of facilitating the construction of a competing natural gas pipeline project in this state, and if the licensee is in compliance with the requirements of the license and with the requirements of state and federal statutes and regulations relevant to the project, the licensee is entitled to payment from the state of an amount equal to three times the total amount of the expenditures incurred and paid by the licensee that are qualified expenditures for the purposes of [AS 43.90.110](#) that the licensee incurred in developing the licensee's project before the date that the state first extended preferential treatment to another person. The payment under this subsection is subject to appropriation. Upon payment by the state of the amount owed under this section, the licensee shall, at no additional cost to the state, assign to the state or the state's designee all engineering designs, contracts, permits, and other data related to the project that were acquired by the licensee during the term of the license. The payment under this subsection is in full satisfaction of all claims the licensee may bring in contract, tort, or other law related to the events that gave rise to the payment.

(b) The review, processing, or facilitation of a permit, right-of-way, or authorization by a state agency in connection with a competing natural gas pipeline project does not create an obligation on the part of the state under this section.

(c) In this section,

(1) "competing natural gas pipeline project" means a project designed to accommodate throughput of more than 500,000,000 cubic feet a day of North Slope gas to market;

(2) "preferential royalty or tax treatment" does not include

(A) the state's exercise of its right to resolve disputes involving royalties and taxes; or

(B) the state's exercise of its right to modify royalties as authorized by law in effect on June 8, 2007.

#### Sec. 43.90.450. Assignments.

(a) A licensee may transfer all or part of the license, including the rights and obligations arising under the license, if, after publishing notice of the proposed transfer, providing notice to the presiding officer of each house of the legislature, and providing a period of not less than 30 days for public review and comment,

(1) the transfer is approved in writing in advance by the commissioners; and

(2) the transfer does not increase or diminish the obligations created by the license or diminish the likelihood of success of the project or the net present value of the license to the state.

(b) Notwithstanding the commissioners' approval of a transfer of all or part of a license under (a) of this section, the transferor of the license remains subject to the requirements of [AS 43.90.220](#) regarding all state money received by the licensee before the effective date of the transfer.

(c) A person may transfer that person's rights to the royalty inducement under [AS 43.90.310](#) and the gas production tax exemption under [AS 43.90.320](#) only in connection with a sale or merger that results in transfer of all the person's assets in the North Slope along with the person's firm transportation capacity contracts in the project.

(d) Except for the transfer of a voucher to a producer under AS 43.90.330(b), a person receiving a voucher under [AS 43.90.330](#) based on the person's acquisition of firm transportation capacity in the first binding open season of the project may transfer the voucher only if the transfer is in connection with the permanent assignment by the person of 100 percent of the firm transportation capacity acquired in the first binding open season of the project.

#### Sec. 43.90.460. Conflicting laws.

Nothing in this chapter shall be construed to repeal or abrogate the administrative, regulatory, or statutory procedures and functions of state and federal law governing the development and oversight of a project.

#### Sec. 43.90.470. State pipeline employment development.

The commissioner of labor and workforce development shall develop a job training program that will provide training for Alaskans in gas pipeline project management, construction, operations, maintenance, and other gas pipeline-related positions.

### Article 05. GENERAL PROVISIONS

Sec. 43.90.900. Definitions.

In this chapter, unless the context otherwise requires,

(1) "affiliate" means another person that controls, is controlled by, or is under common control with a person, and includes a division that operates as a functional unit;

(2) "Alaska Gasline Inducement Act coordinator" or "coordinator" means the person appointed under [AS 43.90.250](#);

(3) "applicant" means a person or group of persons that files an application for a license;

(4) "certificate of public convenience and necessity" and "certificate" mean a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission or the Regulatory Commission of Alaska and an amendment to a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission under 15 U.S.C. 719 et seq. (Alaska Natural Gas Transportation Act of 1976);

(5) "commencement of commercial operations" means the first flow of gas in the project that generates revenue to the owners;

(6) "commissioners" means the commissioner of revenue and the commissioner of natural resources, acting jointly;

(7) "control" means the possession of ownership interest or authority sufficient to, directly or indirectly, and whether acting alone or in conjunction with others, direct or cause the direction of the management or policies of a company, and is rebuttably presumed if the voting interest held is 10 percent or more;

(8) "equity holder" means the

(A) stockholders of a corporation;

(B) members of a limited liability company;

(C) partners of a partnership;

(D) joint venturers of a joint venture;

(E) members of a governmental authority and similar persons; or

(F) holders of any other entity or person;

(9) "gas treatment plant" means a facility downstream of the point of production that conditions gas and removes nonhydrocarbon substances from the gas for the purpose of rendering the gas acceptable for tender and acceptance into a gas pipeline system;

(10) "governing body" means a corporation's board of directors, a limited liability company's managing members, a partnership's general partners, a joint venturer's joint venturers, a governmental authority's board or council members, and similar entities;

(11) "lease" means an oil and gas, or gas, lease issued by this state;

(12) "lessee" means a person that holds a working interest in an oil and gas, or gas, lease issued by this state;

(13) "license" means a license issued under this chapter;

(14) "licensee" means the holder of a license issued under this chapter and all affiliates, successors, assigns, and agents of the holder;

(15) "net present value" means the discounted value of a future stream of cash flow;

(16) "North Slope" means that part of the state that lies north of 68 degrees North latitude;

(17) "open season" means the process that complies with 18 C.F.R. Part 157, Subpart B (Open Seasons for Alaska Natural Gas Transportation Projects) or a similar process for soliciting commitments for pipeline capacity under the regulations, policies, rules, or precedent of the Regulatory Commission of Alaska;

(18) "point of production" has the meaning given in [AS 43.55.900](#);

(19) "project" means a natural gas pipeline project authorized under a license issued under this chapter;

(20) "proprietary," when used to describe information, means that the information is treated by an applicant as confidential and the public disclosure of that information would adversely affect the competitive position of the applicant or materially diminish the commercial value of the information to the applicant;

(21) "recourse rates" means cost-based rates with a minimum and maximum range that are approved by the Federal Energy Regulatory Commission, the Regulatory Commission of Alaska, or the National Energy Board of Canada, as appropriate, and set out in the pipeline's tariff; "recourse rates" includes only those rates that the pipeline must make available to all shippers;

(22) "sanction" means to make financial commitments to go forward with the project as evidenced by entering into financial commitments of at least \$1,000,000,000 with third parties;

(23) "trade secret" has the meaning given in [AS 45.50.940](#);

(24) "under common control with" has the meaning given "control" in this section;

(25) "unit agreement" means an agreement executed by the working interest owners and royalty owners creating the unit.

Sec. 43.90.990. Short title.

This chapter may be cited as the Alaska Gasline Inducement Act.